IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5677 OF 2006

Anita Anant Patil. .. Petitioner.

vs.

State of Maharashtra

& Anr. . .. Respondents.

Mr. Avinash Fatangare for petitioner.

Mr. S.K. Chinchalikar, AGP. for respondents.

CORAM : A.P. DESHPANDE, J.

DATE : 21st November, 2006.

P.C.

. Rule. Rule made returnable forthwith. Taken up for final hearing by consent of parties.

2. The petitioner is possessing a licence to run a restaurant and a bar in the name and style of Santosh Bar and Restaurant at Rabale, Navi Mumbai. The respondent no. 2 issued a show cause notice as to why the licence should not be suspended for a period of 90 days for the breaches/charges mentioned in the show cause notice. The petitioner replied the show cause notice and after considering the same the respondent no. 2 passed an order on 11.1.2005 suspending the licence of the petitioner to run the restaurant and bar for a period of 60 days.

Aggrieved by the said order, the petitioner preferred an appeal under Section 162 of the Bombay Police Act before the State Govt. on 18.2.2005. The dismissal of the appeal by the State Govt. by an order dated 16.3.2005 gives rise to the filing of the present petition.

3. The learned counsel for the petitioner has assailed the order passed by the State Govt. which is impugned in this petition mainly on two grounds : (i) that the petitioner was not afforded any opportunity of hearing before the passing of the order and (ii) that as the petitioner was denied an opportunity to explain, the appellate authority has wrongly held that the appal was barred by time and has been rejected it solely on the ground that the appeal has been filed beyond the period of limitation.

4. The case of the petitioner is that the respondent no. 2 passed an order on 11.1.2005 and it was served on the petitioner on 12.2.2005. It is the case of the petitioner that the acknowledgement of receipt of the order which in possession of respondent no. 2 would indicate the date of service of the order on the petitioner. Be as it may, a categorical statement is made in the petition that the order dated 11.1.2005 passed by respondent no. 2 came to be served on the petitioner on 12.2.2005

and that the petitioner filed the appeal before the State Govt. on 18.2.2005 i.e. hardly within a span of less than a week from the date of service of the order. Perusal of the impugned order nowhere indicates that the petitioner was heard before passing of the said order nor does the order reveal that the petitioner was granted an opportunity of being heard in the matter and he failed to avail of the same. In the absence of any affidavit from the respondents denying the averments made in the petition that the order passed by the respondent no. 2 on 11.1.2005 was served on the petitioner on 12.2.2005, I accept the averments. Thus the filing of appeal before the State Govt. on 10.2.2005 was well within limitation, It has to be concluded that the petitioner's filing of an appeal was very much within the limitation prescribed which is 30 days.

5. In the result, the writ petition is allowed. The impugned order dated 16.3.2005 passed by the Desk Officer, Home Department (Special), Government of Maharashtra dismissing the appeal filed by the petitioner is quashed and set aside. The matter is remanded back to the State Government for a fresh decision on merits. Needless to mention that the State Government shall decide the appeal after granting an opportunity of hearing to the present petitioner.

6. Rule is made absolute in the above terms.

(A.P. Deshpande, J.)